

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of the City of Santa Rosa for Approval to Construct a Public Pedestrian and Bicycle At-Grade Crossing of the Sonoma-Marín Area Rail Transit ("SMART") Track at Jennings Avenue Located in Santa Rosa, Sonoma County, State of California.

Application No. 15-05-014
(Filing Date: May 14, 2015)

**OPENING BRIEF
OF
THE CITY OF SANTA ROSA**

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In accordance with the schedule set forth in the Scoping Memo and Ruling of Assigned Commissioner dated December 11, 2015, the City of Santa Rosa (“City”) respectfully submits its Opening Brief addressing the issues presented by the subject application and requesting Commission approval of the City’s proposed at-grade pedestrian and bicycle crossing at Jennings Avenue.

I. INTRODUCTION

The public need for the proposed at-grade pedestrian and bicycle crossing is occasioned by current and planned operation by the Sonoma-Marín Area Rail Transit (SMART) and North Coast Railroad Authority (NCRA) of passenger and freight rail service affecting, among other things, community members crossing the railroad corridor at Jennings Avenue.

SMART is a passenger train and bicycle and pedestrian pathway project located in Sonoma County and Marin County. SMART owns the rail corridor in Santa Rosa. The first phase of the SMART project, a 42-mile rail and trail project connecting the county

seats and population centers of San Rafael and Santa Rosa, is scheduled to begin passenger service in 2016. NCRA, formed in 1989 to ensure continuation of railroad service in Northwestern California, is responsible for the operation of freight service in the SMART rail corridor, and the rail corridor is currently active for freight rail service, typically consisting of two movements per week, though no set schedule exists in the Santa Rosa segment.¹

The proposed at-grade pedestrian and bicycle crossing is a basic element of the City's General Plan 2035 and Bicycle and Pedestrian Master Plan 2010 which both identify Jennings Avenue as a bicycle boulevard where it crosses the rail corridor.² The City's North Santa Rosa Station Area Specific Plan also identifies a pedestrian and bicycle rail crossing at Jennings Avenue as part of the Plan's circulation system and pedestrian and bicycle network.³

On March 17, 2015, following public hearing and extensive public comment regarding both the at-grade and separated-grade crossing alternatives, the City Council voted unanimously: (1) to certify the Final Environmental Impact Report for the Jennings Avenue Pedestrian and Bicycle Crossing; and (2) to approve an at-grade pedestrian and bicycle crossing at Jennings Avenue.⁴

On May 14, 2015, the City filed Application No. 15-05-014 requesting Commission authorization to construct the proposed at-grade pedestrian and bicycle crossing. On June 4, 2015, the Safety and Enforcement Division filed its protest opposing

¹ Direct Testimony of Jason Nutt; SR-1 at 3-4.

² Jennings Avenue was accepted by Sonoma County in 1904 as a public street that crossed the railroad tracks and was regularly used by residents to cross the tracks prior to the recent installation of fencing at Jennings Avenue. See 6/16/15 Verified Response of SCLTC; fn. 10.

³ *Id.* at 5.

⁴ Direct Testimony of Jason Nutt; SR-1 at 13-14.

the application. On June 15, 2015, Mr. James Duncan filed a response to the application, both supporting the requested at-grade pedestrian and bicycle crossing and challenging the scope of the Commission's jurisdiction with respect to rail crossings involving SMART. On June 16, 2015, the Sonoma County Transportation and Land Use Coalition, the Sierra Club, and Friends of SMART (collectively "SCTL") filed its response in support of the City's application. Evidentiary hearings were conducted before Administrative Law Judge Jeanne McKinney on March 14 and 15, 2016.

The issue presented by application and now the subject of briefing is straightforward: Is the proposed at-grade bicycle and pedestrian crossing at Jennings Avenue in the public interest? Alternatively stated, does the public interest require a grade-separated crossing at Jennings Avenue. As argued below, the City of Santa Rosa submits that an at-grade bicycle and pedestrian crossing at Jennings Avenue, rather than a grade-separated crossing, best serves the public interest.

II. ARGUMENT IN SUPPORT OF THE CITY'S REQUEST FOR AUTHORITY TO CONSTRUCT AN AT-GRADE BICYCLE AND PEDESTRIAN CROSSING AT JENNINGS AVENUE.

A. The Commission Has Clearly Articulated Its Standard For Determining Whether a Proposed At-Grade Crossing Is Justified.

Rule 3.7(c)(2) of the Commission's Rules of Practice and Procedure requires that in order for an at-grade crossing to be approved, the City must demonstrate that construction of a grade-separated crossing is not practicable. In Decision 14-08-015, the Commission set forth the seven criteria to be evaluated in judging the practicability in all at-grade crossing cases, including light-rail transit, passenger railroad, and freight

railroad crossings.⁵ The seven criteria to be applied in meeting the requirements of Rule 3.7(c)(2), referenced by the Commission as “The Seven Factor Impracticability Test,” are as follows:

1. A demonstration of public need for the crossing;
2. A convincing showing that [the City] has eliminated all potential safety hazards;
3. The concurrence of local community and emergency authorities;
4. The opinion of the general public, and specifically those who may be affected by an at-grade crossing;
5. A recommendation by Staff that it concurs in the safety of the proposed crossing, including any conditions;
6. Although less persuasive than safety consequences, the comparative costs of an at-grade crossing with a grade separation; and
7. Commission precedent in factually similar crossings.⁶

As set forth below, the City submits that it has introduced substantial evidence meeting all but one of the seven criteria necessary to demonstrate that a grade-separated crossing is not practicable. In doing so, the City has met its burden of showing that Commission approval of an at-grade pedestrian and bicycle crossing at Jennings Avenue is in the public interest. With regard to the absence of a staff recommendation in support of the proposed at-grade pedestrian and bicycle crossing, the City argues, more fully below, that SED has failed to sufficiently support its recommendation that the crossing at Jennings Avenue should be grade separated.

⁵ Decision No. 14-08-045; 2014 Cal. PUC LEXIS 418, *15; the Commission’s application of the seven criteria to be evaluated under Rule 3.7(c)(2) makes no distinction between at-grade crossing proposals involving light rail versus heavy rail transit.

⁶ D.14-08-015; 2014 Cal. PUC LEXIS 418, *15.

B. The City Has Met Its Burden and Demonstrated that Grade-Separating the Crossing at Jennings Avenue Is Impracticable.

1. The City has demonstrated by convincing evidence that there is a public need for the at-grade pedestrian and bicycle crossing at Jennings Avenue.

No party disputes the need for an authorized public crossing at Jennings Avenue. Until recently, for at least the last fifty years, pedestrians and bicyclists have crossed the rail corridor at Jennings Avenue even though it is not an official crossing permitted by the Commission.⁷ The proposed at-grade pedestrian and bicycle crossing is a basic element of the City's General Plan 2035 and Bicycle and Pedestrian Master Plan 2010 which both identify Jennings Avenue as a bicycle boulevard where it crosses the rail corridor. Furthermore, the City's North Santa Rosa Station Area Specific Plan identifies a pedestrian and bicycle rail crossing at Jennings Avenue as part of the Plan's circulation system and pedestrian and bicycle network.⁸

Specifically, the proposed at-grade crossing will advance the following objectives:

- Replacement of an unapproved crossing with construction of a CPUC-approved and CPUC-compliant pedestrian and bicycle rail crossing at Jennings Avenue.
- Construction of an efficient and convenient crossing for pedestrians and bicyclists at Jennings Avenue in accordance with the Americans with Disabilities Act (ADA) and applicable federal and state regulations.
- Establishment of a pedestrian and bicycle link across the SMART rail corridor at Jennings Avenue to enable Jennings Avenue to become a bicycle boulevard as approved in the General Plan 2035, the Bicycle and Pedestrian Master Plan 2010, and the North Santa Rosa Station Area Specific Plan.

⁷ Direct Testimony of Jason Nutt; SR-1 at 4.

⁸ *Id.* at 5.

- Establishment of a pedestrian and bicycle connection from the planned SMART pathway to Jennings Avenue both to the east and west of the rail corridor.⁹

Situated centrally in the transit-oriented North Santa Rosa Station Area Specific Plan area, the proposed crossing will improve the bicycle and pedestrian connection to the transit center; enhance connectivity between the SMART station site and adjacent commercial areas, residential areas, the transit center, Helen Lehman Elementary School and social services all within 0.5 mile of the crossing. The crossing is also an important component that links the proposed Jennings Avenue bicycle boulevard.¹⁰

The crossing will provide an integrated connection for the underserved medium high density (18-30 units per acre) surrounding residential neighborhoods to all of the activity centers in the immediate area, including the Helen Lehman Elementary School, regional shopping mall, social services, Business Park, transit center at the regional shopping mall, Santa Rosa Junior College, Jennings City park and the G&G Market immediately south of Helen Lehman Elementary School.¹¹ In particular, numerous parents of school-age children who attended the public participation hearing made clear their support for the proposed at-grade pedestrian and bicycle crossing as well as their dissatisfaction with the additional time and distance required for their children to go to and from school in the absence of an accessible at-grade crossing.¹²

The evidence demonstrates the public need for the proposed at-grade pedestrian and bicycle crossing at Jennings Avenue, showing that it will:

- Enhance safety and access for pedestrians and cyclists across the SMART railroad tracks.

⁹ Direct Testimony of Jason Nutt; SR-1 at 6.

¹⁰ *Id.* at 6-7.

¹¹ *Id.* at 7.

¹² February 1, 2016 PPH *in passim*.

- Provide a convenient access to SMART passenger rail station and multi-use path for current and future surrounding residential neighborhoods.
 - Provide neighborhood connectivity.
 - Fill a gap in a regional bikeway network.
 - Enhance safety and convenience access for the disabled community and the surrounding disadvantaged underserved neighborhoods.
 - Provide a safer and more direct route for students walking and bicycling to the Helen Lehman Elementary School.
 - Advance the walkable and bikeable goal of the North Santa Rosa.¹³
2. The City has demonstrated by convincing evidence that it has adopted all reasonable and available measures required to eliminate potential safety hazards at the proposed Jennings Avenue at-grade crossing.

The City has committed to do everything that is necessary to make the proposed at-grade pedestrian and bicycle crossing as safe as is reasonably possible. The City's proposed design for at-grade pedestrian and bicycle crossing reflects consultations with SMART and SED.¹⁴ SED has stipulated that the proposed design meets all legal requirements.¹⁵

The design of the at-grade crossing would be ADA-compliant and would include protection and warning devices in compliance with federal and State regulations, including the requirements of CPUC General Order No. 75-D, Caltrans Highway Design Manual path standards, California Manual of Uniform Traffic Control Devices, and the Federal Highway Administration Railroad-Highway Grade Crossing Handbook.

¹³ Direct Testimony of Jason Nutt; SR-1 at 9.

¹⁴ *Id.* at 10; also Transcript Volume 3 at 229, lns. 16-21.

¹⁵ Transcript Volume 2 at 91, lns. 22-27.

Applicable portions of the Project would also be designed in accordance with the California Building Code.¹⁶

ADA-compliant warning devices and pathway improvements for the at-grade crossing would include flashing light signal assemblies with automatic gate arms, audible warning signals, pedestrian gates, hand rails, paving, walkways, and fencing. Warning devices will indicate when a train is approaching and will trigger gate arms to block pedestrian access.¹⁷

Because the site consists of a double track, electronic signs could be installed to notify pedestrians of a second train is coming in close proximity to the first crossing, to the extent feasible given existing technologies. Exit swing gates would be provided to allow pedestrians to exit the track, if the gate arms were activated while a pedestrian was crossing. Power and fiber optic cable would be available from within the rail corridor for the crossing equipment. Vandal-resistant fencing, five to six feet in height, would be installed to channelize pedestrians to the crossing.¹⁸

The pathway leading to the crossing would be asphalt or concrete and a minimum of 8-feet wide with 2-foot shoulders on either side. On the west side of the rail corridor, the pathway would align with the sidewalk on the northern side of Jennings Avenue, and would open to a portion of the street for bicycle traffic. On the east side of the rail corridor, the pathway would cross Steele Creek at the location of an existing box culvert. The pathway would then align with the sidewalk on the northern side of Jennings Avenue

¹⁶Direct Testimony of Jason Nutt; SR-1 at 10.

¹⁷ *Id.*

¹⁸ *Id.*

east of the rail corridor. A new streetlight lamp would also be installed on the east side of the rail corridor near the northwest corner of Herbert Avenue and Jennings Avenue.¹⁹

Pedestrian sight distance was reviewed at the proposed crossing location and photos were taken at 17 feet from the rail centerline as outlined in the Pedestrian-Rail Crossings In California report that was prepared by the Commission in May, 2008. All vantage points from the decision/reaction point for an uncontrolled crossing are met. Visibility to the north is greater than 1500 feet and to the south over 2000 feet. It is noted in the Commission report that “[i]f the Pedestrian Clearing Sight Distance is insufficient, the additional passive and active devices should be considered for the design of the pedestrian-rail at-grade crossing.” Even though the sight distance criteria will be met, passive and active devices including, fencing, emergency swing gates, pavement markings, truncated domes, flashing light signals, audible devices and automated pedestrian arms/gates will be installed.²⁰

The proposed Jennings Avenue at-grade pedestrian and bicycle crossing will be designed with safety devices and related protection that are equal to and greater than those currently existing at the nearby bicycle and pedestrian crossings along the same corridor, specifically the Commission-approved Copeland Creek at-grade pedestrian and bicycle crossing in Rohnert Park.²¹

The City firmly believes that it has met its burden of demonstrating the safety of the proposed at-grade pedestrian and bicycle crossing, working in collaboration with SMART and relying on available, state-of-the-art safety measures that meet or exceed Commission-mandated standards.

¹⁹ Direct Testimony of Jason Nutt; SR-1 at 10-11.

²⁰ *Id.* at 11.

²¹ *Id.*

3. The City's elected representatives as well as its emergency authorities unanimously support the proposed at-grade pedestrian and bicycle crossing at Jennings Avenue.

The City's elected officials, Santa Rosa emergency authorities, SMART, and intervenors in the subject proceeding, all uniformly support the proposed at-grade pedestrian and bicycle crossing at Jennings Avenue.

The City Council, consisting of seven publicly elected members, has given full consideration to the proposed at-grade crossing, as well as alternatives, including construction of a grade-separated crossing at Jennings Avenue. At its March 17, 2015 public meeting, following extensive public comment regarding the various crossing alternatives, the City Council voted unanimously: (1) to certify the Final Environmental Impact Report for the Jennings Avenue Pedestrian and Bicycle Crossing; and (2) to approve an at-grade pedestrian and bicycle crossing at Jennings Avenue.²²

The City's fire and police chiefs have both provided their written support for and concurrence with the City's request for Commission approval of an at-grade pedestrian and bicycle crossing at Jennings Avenue. Each has further indicated that a grade-separated crossing at Jennings Avenue presents security and access concerns that could have a negative impact upon public safety.²³

It is significant that SMART, the affected rail transit authority, fully supports the proposed at-grade pedestrian and bicycle crossing at Jennings Avenue.²⁴ In its letter supporting the City's efforts to install an at-grade pedestrian and bicycle crossing at Jennings Avenue, SMART emphasizes that the City has worked in conjunction with

²² Direct Testimony of Jason Nutt; SR-1 at 13-14.

²³ Rebuttal Testimony of Jason Nutt; SR-2 at 6-7.

²⁴ Direct Testimony of Jason Nutt; SR-1 at 12.

SMART to take the necessary steps to ensure that rail operations and services in Santa Rosa will be conducted in a manner that is safe for the travelling public.²⁵

4. The general public, as well as the neighborhood residents most directly affected by the proposed at-grade crossing, uniformly support the at grade crossing and object to the grade-separated alternative.

The public participation hearing conducted on February 1, 2016 in Santa Rosa provides the best evidence of local community support for the proposed at-grade pedestrian and bicycle crossing at Jennings Avenue. Twenty-nine members of the public addressed the Commission, including the following: (1) four members of the Santa Rosa City Council, (2) a member of both the Rohnert Park City Council and the Sonoma County Transportation Authority ; (3) an aide to Sonoma County Supervisor Shirley Zane; (4) an aide to state senator Mike McGuire; (5) the Executive Director of Sonoma County Bicycle Coalition; (6) the Regional Director for the North Bay for Green Belt Alliance; (7) various neighborhood residents and local business owners; (8) parents of neighborhood school children; and (9) a disabled member of the public.²⁶

Every member of the public spoke in favor of the proposed at-grade pedestrian and bicycle crossing at Jennings Avenue. Among the public's reasons for favoring an at-grade crossing and opposing the separated-grade alternative were the following: (1) the grade-separated crossing raises various safety and non-safety related concerns, including the likelihood that it would serve as a barrier, discouraging pedestrian and bicycle traffic, particularly with respect to the elderly, the disabled, students attending the local school,

²⁵ Direct Testimony of Jason Nutt; SR-1, Exhibit 5.

²⁶ February 1 PPH; Transcript Volume 1 *in passim*.

and parents with small children; and (2) the size and cost of the separated-grade crossing make it a poor alternative.²⁷

5. The comparative costs of the at-grade proposal and the separated grade alternative weigh in favor of the City's request for authority to construct an at-grade pedestrian and bicycle crossing at Jennings Avenue.

The cost of designing and constructing a separated bike and pedestrian cross is estimated to be \$9,200,000 in contrast to the projected cost of \$1,600,000 for the proposed at-grade crossing.²⁸ The City Council gave its full consideration to both the proposed at-grade crossing and the separated grade crossing alternative and, irrespective of then available federal funding to partially²⁹ support construction of a separated grade crossing, determined that the interests of the public, including the residents of Santa Rosa, are best served by construction of an at-grade pedestrian and bicycle crossing at Jennings Avenue.

The City does not believe that ostensible safety advantages associated with a grade-separated crossing justify the expenditure of more than five hundred (500) percent of the public funds necessary to construct the proposed at-grade pedestrian and bicycle crossing. Even assuming that the City could successfully re-apply for a substantial federal subsidy to construct a grade-separated crossing, the City believes that expenditure of close to \$10 million to construct a massive and unwieldy grade separation devoted solely to pedestrians and bicycles is not a prudent use of public funds when there are other important transportation needs, particularly given the timely availability of the substantially less-costly and safe at-grade crossing option.

²⁷February 1 PPH; Transcript Volume 1 *in passim*.

²⁸ Direct Testimony of Jason Nutt; SR-1 at 15.

²⁹ The City received a grant of \$8 million toward construction of a grade-separated crossing. SED-2 at 8.

SED acknowledges that the process for constructing a grade-separated crossing, would likely take two years.³⁰ SED's witness also acknowledged that he did not have any understanding of the process for applying and obtaining a funding grant from the Metropolitan Transportation Commission ("MTC").³¹ If the City's application were to be rejected, full-scale SMART passenger operations would be in effect for at least two years in the absence of any approved crossing at Jennings Avenue. Given issues related to funding of a grade separated crossing, the period in which there would be SMART operations in the absence of any approved crossing at Jennings Avenue could even be longer.

6. The Commission has approved at-grade pedestrian and bicycle crossings in factually similar conditions.

Pursuant to Commission General Order (GO) 88-B, SMART was authorized to alter an at-grade pedestrian and bicycle crossing of the SMART right-of-way ("ROW") in the City of Rohnert Park, referred to as the Copeland Creek crossing.³² The safety enhancements proposed for the Jennings Avenue at-grade pedestrian and bicycle crossing are equal to or greater than the authorized safety enhancements at the Copeland Creek crossing.

At the February 1, 2016 public participation, Mr. McKenzie, council member from the City of Rohnert Park and member of the Sonoma County Transportation Authority, offered the following comments regarding the Copeland Creek crossing:

I have used it multiple, multiple times. It was pretty rickety and raggedy before the SMART upgrade of the tracks and facilities. It has now been

³⁰ Transcript Volume 2 at 149, lns. 16-23.

³¹ *Id.* at 148, lns. 23-28.

³² Direct Testimony of Jason Nutt; SR-1 at 12.

brought up to fully compliant ADA bicycle safety aspects...It works in Rohnert Park, and I do believe that it would work in Santa Rosa.³³

The City submits that it has met the heavy burden imposed upon an applicant to demonstrate by convincing evidence that any new, proposed at-grade crossing is in the public interest.³⁴ The only criterion set forth in the Commission's "Seven Factor Impracticability Test" that the City has not met and satisfied with convincing evidence is staff concurrence with the City's request for an at-grade pedestrian and bicycle crossing at Jennings Avenue. As argued more fully below, the City does not believe that SED has shown that a grade-separated crossing is practicable, as that term is defined by the Commission, much less that the public interest is better served by denying the City's application and requiring construction of a grade-separated crossing at Jennings Avenue.

C. SED Has Not Provided Factual Justification for Its Recommended Denial of the City's Application.

The City fully recognizes that safety is of paramount importance to the Commission in its consideration of the City's request for authority to construct an at-grade pedestrian and bicycle crossing at Jennings Avenue. As a conceptual matter and as a general proposition, the City accepts that a grade-separated crossing is inherently safer than an at-grade crossing in the context of the comparative risk of a train-pedestrian/bicyclist conflict.³⁵ The City does, however, believe it is important to note that the record is devoid of any evidence or factual analysis necessary to support a finding that a grade-separated crossing at Jennings Avenue is inherently safer than an at-grade pedestrian and bicycle crossing at Jennings Avenue.

³³ *Id.* at 20

³⁴ Rebuttal Testimony of Jason Nutt; SR-2 at 5.

³⁵ The City's witness, Mr. Nutt, has testified, as a general proposition, that he does not "believe that an at-grade crossing is inherently more dangerous than [an] overhead crossing." Transcript Volume 3 at 234, Ins. 4-6.

SED has testified that the main basis for its protest is twofold: (1) an at-grade crossing is always inherently less safe than a grade-separated crossing; and (2) the City's rejection of an \$8 million grant from the Metropolitan Transportation Commission ("MTC") to construct a grade-separated crossing.³⁶ SED further testified that it opposes any new at-grade crossing if a grade-separated crossing is physically capable of construction and could be financed.³⁷ SED ultimately acknowledged that its sole reason for opposing the City's application is that at-grade crossings are inherently more dangerous than grade-separated crossings.³⁸

In opposing the City's application, SED made no distinction between an at-grade rail-highway crossing involving vehicles and a rail-street crossing limited to pedestrian and bicycle traffic. SED testified that irrespective of differences between a proposed at-grade vehicle crossing versus a proposed bicycle and pedestrian crossing its treatment and consideration of safety is identical in either case.³⁹

The City submits that SED's generalized assumption that a grade-separated crossing is always preferable to an at-grade crossing is not determinative of the specific crossing proposal now before the Commission, i.e. whether the proposed at-grade pedestrian and bicycle crossing at Jennings Avenue is in the public interest. Neither the safest at-grade crossing nor the safest grade-separated crossing eliminates all potential safety hazards, as SED readily acknowledges.⁴⁰

The City believes that SED's support for a grade-separated crossing that has been roundly rejected by the City and its residents is not based upon: (1) a proper weighing of

³⁶ Transcript Volume 2 at 132-133, lns. 11-28 and 1-5.

³⁷ *Id.* at 137, lns. 17-24.

³⁸ Transcript Volume 2 at 143, lns. 20-28

³⁹ Transcript Volume 2 at 142-143, lns. 14-28 and ln. 1.

⁴⁰ Transcript Volume 2 at 144-145, ln.28 and lns.1-5 .

the various criteria that the Commission has indicated are germane to its consideration of whether an at-grade pedestrian and bicycle crossing at Jennings Avenue is in the public interest; or (2) any consideration of safety and non-safety concerns associated with a grade-separated crossing of Jennings Avenue.

1. SED has not applied the Commission's adopted standard for determining whether a proposed at-grade pedestrian and bicycle crossing at Jennings Avenue is in the public interest.

SED takes the position that the City has failed to demonstrate that a grade separation at Jennings Avenue is not practicable as required under Rule 3.7(c)(2) of the Commission's Rules of Practice and Procedure, as the term "practicable" is defined in *City of San Mateo v. Railroad Comm'n of California*, 8 CPUC2d 572.⁴¹ SED specifically cites *City of San Mateo* as holding that "practicable" means "being possible physically of performance, a capability of being used, a feasibility of construction."⁴² According to SED's interpretation of Commission precedent, the City must grade separate the proposed pedestrian and bicycle crossing unless the City establishes that it is physically impossible to grade separate it.

SED agrees that the test of "practicability" regarding a grade-separated crossing is required by Rule 3.7(c)(2).⁴³ SED's witness also testified to his understanding that the *City of San Mateo* represents current Commission policy regarding and interpreting the "practicability" of a grade-separated crossing. SED's witness further testified that he was unaware of any Commission decisions subsequent to *City of San Mateo* that further

⁴¹ Prepared Testimony of David Stewart; SED-2 at 10.

⁴² *Id.* at 10-11.

⁴³ Transcript Volume 2 at 141, lns.13-18.

developed the Commission's application of the "practicability" requirement set forth in Rule 3.7(c)(2).⁴⁴

The *City of San Mateo* does not represent current Commission policy. In various subsequent decisions, the Commission has addressed and revised the scope of the Rule 3.7(c)(2) "practicability" test, and these modifications quite clearly do not reflect any requirement that applicant demonstrate the physical impossibility of constructing a grade-separated crossing.⁴⁵ As such, there is no legal support for SED's rejection of the proposed at-grade crossing based, as it solely is, upon SED's reading of *City of San Mateo* as requiring a grade-separated crossing if such crossing can be physically constructed.

Decision 14-08-015 issued by the Commission on August 28, 2014, represents current Commission policy identifying the parameters of the "practicability" test as embodied in Rule 3.7(c)(2). The Commission has established the criteria to be used in evaluating "practicability" in all at-grade crossing cases, including light-rail transit, passenger railroad, and freight railroad crossings.⁴⁶ The seven, specific criteria to be applied in meeting the requirements of Rule 3.7(c)(2) are set forth in Section II.A. above and are addressed in Section IIB above.

SED's witness acknowledges that Rule 3.7(c)(2) does not make any distinction between light rail and heavy rail crossings.⁴⁷ It is therefore undisputed that the Commission's interpretation of the scope of the practicability test in Rule 3.7(c)(2)

⁴⁴ Transcript Volume 2 at 136, Ins. 20-25.

⁴⁵ Rebuttal Testimony of Jason Nutt; SR-2 at 5-6; also D. 13-08-005 and D. 14-08-045.

⁴⁶ Decision No. 14-08-045; 2014 Cal. PUC LEXIS 418, *15; the Commission's application of the seven criteria to be evaluated under Rule 3.7(c)(2) makes no distinction between at-grade crossing proposals involving light rail versus heavy rail transit.

⁴⁷ Transcript Volume 2 at 210, Ins. 18-22.

applies equally to light rail and heavy rail crossings. In fact, D. 14-08-015 expressly states that its “Seven Factor Impracticability Test” triggered by Rule 3.7(c)(2) applies to “all at-grade crossing cases (light-rail transit, passenger railroad, and freight railroad).”⁴⁸

The City anticipates that SED will argue that the Commission-established criteria for evaluating the practicability of a grade-separated crossing differs depending on whether the application involves a light rail crossing or a heavy rail crossing and that the practicability test for a heavy rail crossing still turns on the physical possibility of constructing a grade-separated crossing. For example, SED’s witness asserts that the practicability test that he relied upon as embodied in *City of San Mateo* “mainly applies to heavy rail systems and not so much light rail transit systems.”⁴⁹ As is clear from D. 14-08-045, SED has erred in two respects: (1) it has applied the wrong test for determining practicability; and (2) it applies a different test of practicability for heavy rail crossings than for light rail crossings. Irrespective of the fact that D. 14-08-015 involves an application for a light-rail transit crossing, it quite clearly applies to the City’s proposed at-grade crossing of SMART’s heavy rail line.

2. SED has given insufficient consideration to the safety and non-safety hazards related to a grade separated crossing at Jennings Avenue.

SED has testified that its review of safety hazards related to grade separation at Jennings Avenue was limited to review of overhead clearances for the track and side clearance for the trains and that no other safety-related concerns or hazards were considered.⁵⁰ In response to counsel’s question regarding the level of consideration

⁴⁸ D. 14-08-045; 2014 *Cal. PUC LEXIS* 418, *15.

⁴⁹ Transcript Volume 2 at 141, Ins. 19-21.

⁵⁰ Transcript Volume 2 at 135, Ins. 5-10.

given to costs in determining the practicability of a grade separation, SED's witness responded: almost none.⁵¹

The City submits that SED has provided insufficient evidentiary support to justify its recommendation for a grade-separated crossing at Jennings Avenue. SED confined its safety review to consideration of issues associated with the proposed at-grade pedestrian and bicycle crossing. The limited factual information specific to the proposed at-grade pedestrian and bicycle crossing that was considered by SED hardly supports, if at all, SED's basic contention that an at-grade pedestrian and bicycle crossing at Jennings Avenue is inherently less safe than a grade-separated crossing at Jennings Avenue.

The limited facts considered by SED in its review of the at-grade crossing proposals are as follows: (1) 36 trains per day travelling at speeds of up to 35 mph; (2) stopping distances for SMART passenger trains and freight trains travelling at various hypothetical speeds; (3) the existence of multiple tracks at the Jennings Avenue location; (4) the presence of an elementary school, senior living units, and nearby family dwellings; and (5) reports of a homeless encampment along the SMART ROW.⁵²

Based upon these few, disparate facts and in the absence of any analytical foundation, SED impliedly assumes that the at-grade crossing will result in more train/pedestrian conflicts than would the grade-separated crossing. SED, however, provides no quantification of the comparative risk of train/pedestrian conflicts, much less the degree and extent to which the proposed at-grade pedestrian and bicycle crossing might potentially increase the incidence of train/pedestrian conflicts. SED's testimony is speculative in the extreme.

⁵¹ Transcript Volume 2 at 142, lns.5-8.

⁵² Prepared Testimony of David Stewart at 8-11; SED-2.

The reliance of the SED witness on generic national and state data relating to the incidence of pedestrian/train conflicts at at-grade highway-rail crossings involving vehicular traffic provides little insight regarding the relative safety of an at-grade pedestrian and bicycle crossing at Jennings Avenue, much less relevant information showing that the proposed at-grade crossing is less safe than a grade-separated crossing.

SED made no assessment of the potential risk of potential train/pedestrian conflicts at the Jennings Avenue at-grade crossing. SED undertook no analysis of critical facts required to make such a valid assessment, including consideration of the number of pedestrian/bicyclists expected to use the crossing on a daily basis and the number of trains passing the crossing during expected hours of increased pedestrian/bicycle use, particularly during the hours between 7:00 a.m. - 9:00 a.m.; 11:00 a.m. - 1:00 p.m.; (after school) 1:30 p.m.- 3:30 p.m.; and 4:00 p.m. - 6:00 p.m.

The only evidence of record regarding pedestrian and bicycle use of the Jennings Avenue crossing during the above-referenced hours shows the following: (1) a total of 25 bicyclists and 91 pedestrians used the crossing over the observed periods; (2) ninety percent or more of the bicyclists were categorized as recreational users; and (3) approximately 30 percent of the pedestrians were characterized as school-related trips.⁵³

The only evidence of record regarding expected SMART train traffic during the above-referenced hours shows the following: (1) between 7:00 a.m. and 9:00 a.m. - 4 southbound trains and 4 northbound trains, each approximately 30 minutes apart; (2) between 11:00 a.m. and 1:00 p.m. - 1 northbound train; (3) between 1:30 p.m. and

⁵³ Direct Testimony of Jason Nutt; SR-1 at 5.

3:30 p.m. - 1 southbound train; and (4) between 4:00 p.m. and 6:00 p.m. - 4 northbound trains and 3 southbound trains, each approximately 30 minutes apart.⁵⁴

Again, SED made no assessment of the risk associated with the proposed at-grade crossing given anticipated pedestrian-bicyclist use and expected train traffic at the location. A generalized assertion regarding the possibility of a train/pedestrian conflict at any at-grade crossing is not evidence that the proposed at-grade pedestrian and bicycle crossing at Jennings Avenue presents an unreasonable or unacceptable risk to public safety. As such, the record evidence is insufficient to support a finding that an at-grade pedestrian and bicycle crossing at Jennings Avenue, which meets all Commission standards and requirements, is not safe.

Rather, the record supports a Commission determination that the proposed at-grade pedestrian and bicycle crossing provides a reasonable level of safety and is in the public interest. The record includes evidence of the following: (1) an at-grade crossing design that is in compliance with all applicable safety standards, (2) the efficacy of appropriate at-grade crossing protection,⁵⁵ (3) the City's collaboration with SMART to enhance safety, and (4) the expected pedestrian and bicycle use of the crossing and related train traffic,

As a general proposition and in the absence of any specific comparative analysis, it can be stated that an at-grade crossing is inherently less safe than a grade separated crossing. However, with respect to the subject proceeding, SED has not presented factual evidence sufficient to demonstrate that the proposed at-grade pedestrian and bicycle

⁵⁴ SR-4.

⁵⁵ Direct Testimony of David Alden; SCLTC-12 at 4.

crossing at Jennings Avenue is less safe than a grade separated crossing at Jennings Avenue.

SED's witness acknowledges that there is "no 100 percent" guarantee that construction of an overhead crossing will eliminate the possibility of any pedestrian/train conflict.⁵⁶ Mr. Stewart has testified that the most critical safety problems faced by railroads are collisions at highway-rail grade crossings and incidents involving trespassers.⁵⁷ The evidence in this proceedings shows the existence of homeless encampments in the SMART ROW, holes in the fencing protecting the SMART ROW (including a hole in fencing near an overcrossing), and the potential for jumping over or tunneling under the six foot fencing that runs along the SMART ROW.⁵⁸ A grade crossing separation will not eliminate the problem of trespassers on the SMART ROW nor will it eliminate pedestrian/train collisions involving trespassers, the most critical safety problem faced by railroads.

The record reflects a variety of other safety-related concerns associated with a grade separated crossing at Jennings Avenue, none of which were addressed or considered by SED. The City has presented testimony showing that a grade-separated crossing is not free of safety concerns. The City's police and fire chiefs have reported that urban/suburban grade-separated crossings have a higher instance of crime and illicit activity than at-grade crossings and that there are increased challenges to provide services to a grade-separated crossing over an at-grade crossing, including access.⁵⁹

⁵⁶ Transcript Volume 2 at 145, Ins.1-5.

⁵⁷ Prepared Testimony of David Stewart; SED-2 at 4.

⁵⁸ Transcript Volume 2 at 119, Ins. 15-16 and at 155, Ins. 1-9 and at 122, Ins.3-8 and at 125, Ins. 5-6; Rebuttal Testimony of David Alden; SCTL-13 at 3; Prepared Testimony of David Stewart; SED-2 at 9.

⁵⁹ Rebuttal Testimony of Jason Nutt; SR-2 at 6.

Other safety concerns considered by the City Council, include the following:

(1) the switchbacks obstruct site lines and create personal safety concerns; (2) the extended slopes and limited confines of the overcrossing represent an attraction for potentially unsafe activities like skateboarding, (3) the eight percent slope, particularly during inclement weather, will present hazards, particularly for the elderly, disabled, and parents with small children; and (4) the structure would create a vertical barrier dividing an established neighborhood, encouraging increased vehicular use while diverting pedestrian and bicycle traffic to alternatives that could well be less safe than a properly protected at-grade crossing at Jennings Avenue.⁶⁰

Additional evidence of safety hazards related to grade separations has been provided by the Sonoma County Transportation and Land Use Coalition, the Sierra Club, Friends of SMART, and Stephen Birdleough (collectively “SCTLC”). SCTLC has testified as follows: A safe walking environment relies on the “eyes” in nearby residences or businesses that can be watching over people and activities, yet there would be no neighboring eyes overlooking a pedestrian bridge at Jennings Avenue. Crimes can occur when a gang blocks both access points of an overpass - something that is easy to do. The fear of being victimized is a powerful factor in avoiding pedestrian overpasses, particularly for women and particularly at night. The support columns provide hiding places for perpetrators to jump their victims, particularly at night. Places without constant use and “eyes-on” are also subject to vandalism.⁶¹ The convoluted ramps required by the constrained footprint for the Jennings Avenue overcrossing will

⁶⁰ Rebuttal Testimony of Jason Nutt; SR-2 at 8.

⁶¹ Direct Testimony of Lois Fisher; SCTLC-9 at 2-3.

discourage its use, leading to the potential for an increase in the number of trespassers on the SMART ROW and the related potential for increased pedestrian/train conflicts.⁶²

SCTLC also provided testimony directly addressing the likelihood that a 450 foot ramp leading up to a bridge over the tracks and a similar ramp from the bridge to the ground could impose a disproportionate burden upon people with disabilities.⁶³ The testimony shows the following: (1) people have difficulty navigating ramps even when the structure is built in compliance with ADA requirements; (2) elderly folks often find that they cannot walk up a 5% incline (much less an 8% incline); (3) the longer the ramp, the more people are likely to be unable to use an ADA compliant ramp; (4) a down ramp is more risky than an up ramp and particularly dangerous for wheelchair users; (5) a ramp that is 450 feet long will require more than a dozen resting places, will discourage use, and cause more people with mobility disabilities to get a ride in a car or forego the trip.⁶⁴

Regarding non-safety related concerns associated with a separated grade, the City has testified that a separated grade crossing at Jennings Avenue is economically infeasible and environmentally unacceptable. The cost differential between the crossing alternatives was an important consideration for the City Council.⁶⁵ Other concerns that factored in the City Council's rejection of the overcrossing alternative included the following: (1) significant and vocal opposition from the Jennings Ave. neighborhood group which characterizes the overhead structure as a "monstrosity;" (2) the inconvenience of traversing an extended elevated pathway in conjunction with the

⁶² Rebuttal Testimony of David Alden; SCTLC-13 at 3.

⁶³ Direct Testimony of Paul George; SCTLC-12/13.

⁶⁴ *Id.* at 2-3.

⁶⁵ Rebuttal Testimony of Jason Nutt; SR-1 at 7.

likelihood of continued illegal crossing at ground level; (3) loss of parking to accommodate the structure; and (4) negative aesthetics associated with a massive concrete structure, including significant and unavoidable visual impacts even with mitigation.⁶⁶

The City believes that it has demonstrated that the proposed at-grade pedestrian and bicycle crossing at Jennings Avenue will better serve the public interest than would a grade separated crossing at Jennings Avenue. The record reflects that the City has made the showing necessary for Commission approval of an at-grade crossing, having met by clear and convincing evidence its burden under the applicable Commission standard of demonstrating that construction of a grade-separated crossing is not practicable.

The weight of the evidence shows the following:

(1) There is a public need for an authorized crossing at Jennings Avenue.

(2) The proposed at-grade crossing will meet all applicable Commission safety standards and requirements.

(3) The City's elected representatives, emergency authorities, SMART, affected neighborhood residents and businesses, the general public, and the intervenors in the subject proceeding uniformly support the proposed at-grade crossing;

(4) The Commission has approved a pedestrian and bicycle crossing of the SMART ROW in Rohnert Park that is similar to the proposed at-grade crossing.

(5) The proposed at-grade crossing will cost \$1,600,000 while the grade-separated crossing would cost \$9,200,000.

⁶⁶ Direct Testimony of Jason Nutt; SR-1 at 18.

(6) The proposed at-grade crossing can be constructed in time to coincide with SMART's commencement of full passenger service while it could take up to two years to fund and construct a grade-separated crossing.

(7) A grade-separated crossing raises a number of safety concerns, including the potential for increased criminal activity, limitations on emergency access, a decrease in neighborhood security, and dangerous condition related to the structure's extensive ramping, particularly for those with mobility disabilities.

(8) A grade-separated crossing raises non-safety related concerns, including: (a) a massive footprint that will encroach upon neighboring businesses and residents; (b) vocal opposition from the affected residents and businesses; and (c) the likelihood that it would serve as a barrier, discouraging use by pedestrians and bicyclists, particularly with respect to the elderly and disabled, while encouraging greater vehicular use.

The evidence of record supports a Commission determination that the proposed at-grade pedestrian and bicycle crossing at Jennings Avenue best serves the public interest.

III. CONCLUSION

For all of the reasons set forth herein, the City of Santa Rosa requests that the Commission, as quickly as is practicable, grant its approval of the City's request for authority to construct an at-grade pedestrian and bicycle crossing at Jennings Avenue.

Respectfully submitted on April 15, 2016 at San Francisco, California.

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